

**CALGARY
ASSESSMENT REVIEW BOARD
DECISION WITH REASONS**

In the matter of the complaint against the property assessment as provided by the *Municipal Government Act*, Chapter M-26, Section 460, Revised Statutes of Alberta 2000 (the Act).

between:

Hopewell Field Inc. (Represented by Colliers International), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

***Board Chair, W. Garten
Board Member, P. Pask
Board Member, D. Morice***

This is a complaint to the Calgary Assessment Review Board in respect of a property assessment prepared by the Assessor of The City of Calgary and entered in the 2011 Assessment Roll as follows:

ROLL NUMBER: 201599263

LOCATION ADDRESS: 5 COPPERPOND CM SE

HEARING NUMBER: 62294

ASSESSMENT: \$18,310,000

This complaint was heard on 11TH day of October, 2011 at the office of the Assessment Review Board located at Floor Number 3, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 11.

Appeared on behalf of the Complainant:

- *D. Porteous, Colliers International*

Appeared on behalf of the Respondent:

- D. Desjardins, City of Calgary

Board's Decision in Respect of Procedural or Jurisdictional Matters:

The Board derives its authority to make this decision under Part 11 of the Alberta Municipal Government Act.

There were no procedural or jurisdictional matters brought before the Board.

The Board proceeded to hear the complaint, as outlined below.

Property Description:

The Subject Property is a vacant multi-residential land parcel totalling 17.84 acres located in the southeast community of Copperfield.

Issues:

The issue under appeal is the Market Value of the land. Is the land estimated value at \$18,310,000 representing approximately \$1,026,000 per acre, or does the land have an estimated value at \$13,380,000 or \$750,000 per acre?

Legislation:

The *Municipal Government Act*, R.S.A. 2000, c. M-26 (MGA);

s. 1 (n) *"market value" means the amount that a property, as defined in section 284(1)(r) might be expected to realize if it is sold on the open market by a willing seller to a willing buyer.*

s. 284 (1)(r) *"property means"*

- i) *a parcel of land,*
- ii) *an improvement, or*
- iii) *a parcel of land and the improvement to it;*

s. 293(1) *In preparing and assessment, the assessor must, in a fair and equitable manner,*

- (a) apply the valuation and other standards set out in the regulations, and*
- (b) follow the procedures set out in the regulations.*

s.293(2) *If there is no procedure set out in the regulations for preparing assessments, the assessor must take into consideration assessments of similar property in the same municipality in which the property that is being assessed is located.*

s. 467(1) *An assessment review board may, with respect to any matter referred to in section 460(5), make a change to an assessment roll or tax roll or decide that no change is required.*

s. 467 (3) *An assessment review board must not alter any assessment that is fair and equitable, taking into consideration*

- a) the valuation and other standards set out in the regulations,*
- b) the procedures set out in the regulations, and*
- c) the assessments of similar property or businesses in the same municipality.*

Matters Relating to Assessment and Taxation Regulation, Alta Reg 220/2004 (MRAT);

s. 2 *An assessment of property based on market value*

- a) must be prepared using mass appraisal*
- b) must be an estimate of value of the fee simple estate in the property, and*
- c) must reflect typical market conditions for properties similar to that property*

s. 4(1)(a) *The valuation standard for a parcel of land is market value*

s. 5(1) *The valuation standard for improvements is*

- a) the valuation standard set out in section 7, 8 or 9, for the improvements referred to in those sections, or*
- b) for other improvements, market value*

s. 6(1) *When an assessor is preparing an assessment for a parcel of land and the improvements to it, the valuation standard for the land and improvement is market value unless subsection (2) or (3) applies.*

Complainant's Requested Value: \$13,380,000 based on \$750,000 per acre.

Complainant's Position:

The Complainant provided evidence package C-1 for its presentation. The Complainant argued that the best estimate of market value is the sale of the subject property.

The Complainant brought forward three (3) Purchase and Sale agreements as follows:

1. Agreement dated July 29, 2010, between Hopewell Field Inc. (Developer) and Brad Remington Homes 2010 Inc. (Purchaser) agreeing to purchase a 4.97 acre parcel (of the subject property) for \$3,802,050 or \$765,000 per acre. There was further evidence of an assignment of this purchase and sale agreement between Brad Remington Homes 2010 Inc. to Copperfield Park Ltd. in a letter from McLeod & Company (representing the purchaser) dated August 23, 2011.
2. Agreement dated July 12, 2010, between Hopewell Field Inc. (Developer) and Aldebaran Enterprises Inc. agreeing to purchase a 4.97 acre parcel (of the subject property) for \$3,727,500 or \$750,000 per acre and a 3.13 acre parcel (of the subject property) for \$2,347,500 or \$750,000 per acre.
3. Agreement dated August 31, 2010, between Hopewell Field Inc. (Developer) and

Stonecroft Copperfield Inc. (Purchaser) agreeing to purchase a 4.76 acre parcel (of the subject property) for \$3,570,000 or \$750,000 per acre.

The Complainant argued that these Purchase and Sale agreements demonstrate that the value of the vacant land is \$750,000 per acre and not the \$1,026,000 per acre as calculated by the City of Calgary for assessment purposes. The Complainant argued that the Burden of Proof has been met based on the following.

- The Complainant's 3 executed arms length Purchase and Sale agreements all priced at \$750,000 to \$765,000 per acre.
- Condition dates met in each Purchase and Sale agreements.
- The subject is broken up into 4 parcels. The Complainant argued that the larger the parcel the lower the price per acre so if this parcel had remained intact then the selling price would likely be lower than the existing sale price.

Upon questioning, the Complainant clarified the following points:

- The assignment of the July 29, 2010 Purchase and Sale agreement was not part of the evidence package.
- There was no explicit evidence provided to the board that confirmed that conditions had been removed on any of the 3 purchase and sale agreements.
- Confusion over a possible duplication of parcels (4.97 acres) was cleared up when it was determined that there were 2 parcels containing 4.97 acres within the subject property.

Respondent's Position:

The Respondent provided evidence package R-1 for its presentation. The Respondent argued that all Purchase and Sale agreements were "post facto" and as such should not be given any weight by the Board.

Further to this argument, the Respondent argued that none of the parcels identified in the Purchase and Sale agreements had transferred to the new owners at Land Titles office and should not be considered by the Board as bona fide sales for the purposes of valuation.

Upon questioning, the Respondent clarified the following points:

- The Complainant did not meet the Burden of Proof, as these purchase and sale agreements have not been completed and the land has not transferred.
- The Respondent provided 2 LARB decisions 0266/2011-P and 0267/2011-P, where the Board has confirmed assessment on similar vacant land.
- The Respondent did not provide any evidence on how the City of Calgary assessment was calculated.
- The Respondent did not provide any equity comparables within the City of Calgary.

Complainant Summary

In summary the Complainant argued the following additional points:

- The Complainant argued that conditions within the purchase and sale agreements had been met and the assignment of the purchaser's rights confirmed this position in the July 29, 2010, transaction.
- The Complainant argued that Onus had been met and a reduction to \$750,000 per acre was justified.

Respondent Summary

In summary the Respondent argued the following additional points:

- The Respondent argued that since the subject property had not yet changed hands at land titles then this could not be considered a valid sale for assessment purposes.

Last Word by the Complainant

- The Complainant argued that there was no evidence from the City of Calgary submission that indicated that the sales have not gone through land titles.

Board's Decision in Respect of Each Matter or Issue:

- The dates on the Purchase and Sale agreements were all close to the valuation date which provided the best evidence in making a final decision.
- The evidence provided in the Purchase and Sale agreement between Hopewell Field Inc. and Brad Remington Homes 2010 Inc. demonstrated that the purchase was going forward as the condition removal date had expired and the interest in the sale has been requested to be assigned to Copperfield Park Ltd. from Brad Remington Homes 2010 Inc.
- The evidence provided in the Purchase and Sale agreement between Hopewell Field Inc. and Aldebaran Enterprises Inc. suggests that the deposit date has expired and there appears to be a substantial amount of unconditional deposit in place as an incentive for the purchaser to complete the transaction.
- The evidence provided in the Purchase and Sale agreement between Hopewell Field Inc. and Stonecroft Copperfield Inc. continues to be on-going with special conditions including a development permit which is required to be satisfied before conditions will be removed.

Board's Decision:

It is the Board's Decision to reduce the assessment to \$13,380,000 based on \$750,000 per acre.

Reason(s) for Decision

The Board's reasons for this decision are as follows:

- The Board found that the Respondent provided no evidence on how the City of Calgary assessment was calculated.
- The Board found that the Respondent provided no evidence of equity with other City of Calgary land assessments in the area.
- The Board placed the most weight on the 3 Purchase and Sale agreements currently in place on the subject property.
- The Purchase and Sale agreements between the Complainant and Brad Remington Homes 2010 inc./Aldebaran Enterprises inc., provided the best available evidence to the Board as to the Market Value of the Land.
- The Board placed little weight on the LARB decisions in the Respondent's evidence package as the Letters of Intents and Purchase and Sale agreements had many conditions which had yet to be removed at the time of the LARB hearings.

DATED AT THE CITY OF CALGARY THIS 24 DAY OF October 2011.


W. Garten
Presiding Officer

APPENDIX "A"**DOCUMENTS PRESENTED AT THE HEARING
AND CONSIDERED BY THE BOARD:**

NO.	ITEM
1. C-1	Complainant Disclosure
2. R-1	Respondent Disclosure

An appeal may be made to the Court of Queen's Bench on a question of law or jurisdiction with respect to a decision of an assessment review board.

Any of the following may appeal the decision of an assessment review board:

- (a) the complainant;*
- (b) an assessed person, other than the complainant, who is affected by the decision;*
- (c) the municipality, if the decision being appealed relates to property that is within the boundaries of that municipality;*
- (d) the assessor for a municipality referred to in clause (c).*

An application for leave to appeal must be filed with the Court of Queen's Bench within 30 days after the persons notified of the hearing receive the decision, and notice of the application for leave to appeal must be given to

- (a) the assessment review board, and*
- (b) any other persons as the judge directs.*